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Tax update

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This issue:
- Capital Gains Tax (CGT);
- open tax appeals;
- tax implications; and
- good news for landlords.

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Clarification of circumstances where a Capital Gains Tax (CGT) clearance certificate is not required

Revenue have issued eBrief No 43/16 in response to an increase in requests for clarification in relation to the CG50 certification procedures under Section 980 Taxes Consolidation Act (TCA) 1997.

CG50s are required in the following cases:
- sales by financial institutions of loans secured on land in the State in the ordinary course of trades not carried on in the State. Revenue's view in regard to loans secured on land in the State, is that in general, such loans are interests in land for the purposes of Section 980 and are regarded as securities for the purpose of that section; and
- in the case of transfer of assets to which Section 617 applies, the consideration is deemed to be the original cost of acquiring the asset by the vendor company. Revenue have clarified that this is also to be regarded as the consideration for such transfers and, where this does not exceed €500,000, the requirement to deduct 15% from the purchase price or obtain a CG50 certificate does not apply.

Revenue have also clarified in eBrief No 43/16 that CG50s are not required in the following scenarios:
- disposal of an asset by a person where any gain accruing on the disposal would not be a chargeable gain (e.g. a pension fund which has exemption from CGT, a disposal by a charity, a disposal by NAMA or a disposal by a Real Estate Investment Trust (REIT) to which Section 705G(I)(B) is applicable);
- sales of such loans by "qualifying companies" under Section 110 TCA in the ordinary course of business activities carried on in the State; and
- payments made to non-resident unit holders in investment undertakings that are within Sections 739B and 739C TCA. A purchaser can place reliance on the Central Bank register of alternative investment funds in order to establish the tax-exempt status of any such investment undertaking.

Open tax appeals – what is a settlement letter?

As mentioned in our last Tax Update, the new tax appeal regime and Tax Appeal Commission (TAC) came into operation on 21 March 2016. The legislation governing the new regime contains provisions relating to the transition from the old appeals process to the new one. Some of these provisions deal with appeals that had not been referred to the Appeal Commissioners by 21 March.

After 21 March 2016, Revenue are required to refer such "unsettled" appeals to the new TAC as soon as possible.

Revenue are also required to request each appellant to indicate if he or she are to have the appeal referred to the TAC or if they wish to settle the appeal by agreement. Where settlement cannot be reached, Revenue is required to refer the appeal to the TAC.

Revenue have now issued "settlement" letters to appellants and their tax advisors in a standard format to all cases, regardless of the current status of correspondence between the appellant and Revenue or current discussions with Revenue.

The letter provides two options to the appellant/advisor, either immediate referral to the TAC or enter into settlement negotiations with Revenue. The appellant/advisor should complete the pre-formatted reply notice to notify Revenue of the option taken and return to Revenue within 30 days of the notice.

At the end of the 30 day period, assuming that the appellant elected to enter into settlement negotiations with Revenue, a further three month period is given to allow a settlement to be reached. Where a settlement cannot be reached by 1 September 2016, Revenue will refer the appeal to the TAC. Where appellants do not reply within the 30 day period it will be assumed they wish their appeal to be referred to TAC without further negotiation.

Investment assets and debt forgiveness – consider your tax implications before finalising your settlement

Income tax

In broad terms, interest on money borrowed to purchase, improve or repair let property is deductible in computing rental income for tax purposes. In the event that there is a write off of interest accrued but not paid as part of the debt settlement, and such interest was deducted when calculating taxable rental income, an income tax cost may arise.

Capital Gains Tax (CGT)

Section 552 (1B) TCA 1997 provides that the base cost allowable in calculating a gain or loss on a disposal of a chargeable asset, where part of a loan has been written off by the lender, should be reduced by the amount of the write off. The purpose of the legislation is to reflect that the purchaser will not have suffered a real economic loss. Legislation applies to reduce the capital loss by the lower of the capital loss realised and the loan written off.
If the only link between the loan and the property is that the property has been used as security, a release or forgiveness of debt should not impact on the base cost of that property.

Capital Acquisition Tax (CAT)

Where for bona fide commercial reasons, a financial institution enters into a debt restructuring, forgiveness or write-off arrangement with a customer, Revenue's approach is that the financial institution is not intent on making a gift of any sort to the mortgagor/debtor.

Accordingly, the borrower should not be subject to a CAT charge in respect of any such debt.

A CAT charge may still arise where the lender is not a financial institution.

Good news for landlords - deductibility of loan interest

From 1 January 2016, a landlord who rents residential premises for a period of three years to tenants in receipt of certain social housing supports, may deduct the balance of the interest accrued in each year of the three year period. The balance of the interest is deductible as an expense in computing the taxable rents from the premises in question. This is notwithstanding the general 75% interest restriction on such premises. The rolled-up interest balance is treated as accruing on the day after the three year period ends and relief is obtained by way of a claim to Revenue after the end of the period. Landlords must submit a declaration of undertaking form to the Private Residential Tenancies Board (PRTB) in order to avail of this initiative.

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